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No. 84-312

In the Supreme Court of the United States

OCTOBER TERM, 1984

DONALD J. DEVINE, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, PETITIONER

v.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE PETITIONER

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

JOSEPH A. MORRIS
General Counsel
Office of Personnel Management
Washington, D.C. 20415

TABLE OF AUTHORITIES

Cases: Page

Harris v. *McRae*, 448 U.S. 297 16
Heffron v. *International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 3
Lehman v. *City of Shaker Heights*, 418 U.S. 298 ..... 2, 10, 15
Maher v. *Roe*, 432 U.S. 464 16
NAACP v. *Button*, 371 U.S. 415 ..... 16, 17
NAACP Legal Defense & Educational Fund, Inc. v. *Campbell*, 504 F. Supp. 1365 ..... 3, 4
Perry Education Assn. v. *Perry Local Educators' Assn.*, 460 U.S. 37 ..... 2, 4, 5, 6, 7, 9, 10, 12
Regan v. *Taxation With Representation*, 461 U.S. 540 16
Secretary of State v. *Joseph H. Munson Co.*, No. 82-766 (June 26, 1984) 3
United States Civil Service Comm'n v. *National Ass'n of Letter Carriers*, 413 U.S. 548 14
United States Postal Service v. *Council of Greenburgh Civic Ass'ns*, 453 U.S. 114 2
Village of Schaumburg v. *Citizens for a Better Environment*, 444 U.S. 620 ..... 3, 11
Widmar v. *Vincent*, 454 U.S. 263 ..... 2, 15

Constitution, statute and regulation:

U.S. Const. Amend. I 1, 5, 7, 9, 13, 16, 17
26 U.S.C. 501(c)(3) 17
Exec. Order No. 12,404, 3 C.F.R. 151 ..... 1, 3, 4, 6, 8, 11, 14, 17

Miscellaneous:

Executive Orders 12353 and 12404 As They Regulate the Combined Federal Campaign: Hearing Before a Subcomm. of the House Comm. on Government Operations, 98th Cong., 1st Sess. (1983) 7, 10

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In our opening brief we showed that the longstanding limitation of the Combined Federal Campaign to traditional health and welfare charities, now codified in Executive Order No. 12,404, 3 C.F.R. 151, is reasonable and therefore consistent with the First Amendment. Respondents and their amici have failed to offer any persuasive reason why the President is constitutionally required to include advocacy groups as beneficiaries of the Campaign.

1. In their efforts to portray this case as involving a forum for expressive activity, respondents and their amici lose sight of the fundamental nature of the Campaign. The Campaign is an employer-sponsored charity drive, similar to drives conducted in public and private workplaces throughout the country. When President Kennedy established the Campaign in 1961, the point was not to create some variation on Hyde Park that would afford charities an opportunity to engage in expressive activity; rather, the purpose was to encourage federal employees to make contributions to a limited number of charities by providing a convenient mechanism for doing so, while minimizing disruption in the federal workplace. See Pet. Br. 4-6, 25.[1]

The Campaign has always been a closely regulated activity, controlled by the federal government in vir-

[1] Respondents (Br. 20-21) and their amici (NCRP Am. Br. 11-14; American Jewish Comm. Am. Br. 8-14; ACLU Am. Br. 23-42) therefore err in contending that this case involves a limited public forum, *i.e.*, public property the government "has opened for use by the public as a place for expressive activity." *Perry Education Assn.* v. *Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983). A limited public forum normally involves a facility that has been opened to the public generally, or to a class of individuals, in an environment that promotes unrestricted discussion in "the marketplace of ideas." *Widmar* v. *Vincent*, 454 U.S. 263, 267-268 n.5 (1981). The suggestion of respondents and their amici that a limited public forum is created whenever the government permits selective access to government property in connection with some type of expressive activity would swallow up the non-public forum category. See, *e.g.*, *Perry*, *supra* (school mailboxes); *United States Postal Service* v. *Council of Greenburgh Civic Ass'ns*, 453 U.S. 114 (1981) (postal mailboxes); *Lehman* v. *City of Shaker Heights*, 418 U.S. 298 (1974) (advertising panels).

tually every respect, and limited to a carefully selected group of beneficiaries. The government, acting in its capacity as employer, formulates Campaign policies and directs Campaign operations, and federal employees conduct all solicitation activities. Charities do furnish to the Campaign a limited amount of information about their activities. However, the Campaign clearly does not entail the sort of face-to-face fundraising activities by charities themselves that this Court has considered in the charitable solicitation cases on which respondents and their amici rely. See, *e.g.*, *Secretary of State* v. *Joseph H. Munson Co.*, No. 82-766 (June 26, 1984); *Heffron* v. *International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981); *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620, 632 (1980).

Respondents are plainly wrong in suggesting (Br. 26-27 n.34, 30, 39; see also ACLU Am. Br. 26-31) that the Campaign has always been a "clearinghouse" that includes all sorts of charities, including advocacy groups. While it is true that the earlier written statements of Campaign eligibility criteria were not as precise as that contained in Executive Order No. 12,404, there is no question about the actual practice of the Campaign. Respondents do not contend that they or any other advocacy groups participated in the Campaign from its inception in 1961 through 1980; and the record is clear that when several respondents applied to participate in the Campaign in 1980 petitioner's predecessor rejected their applications on the ground that they did not provide direct health and welfare services. See Resp. Br. 7; *NAACP Legal Defense & Educational Fund, Inc.* v. *Campbell* (*NAACP I*), 504 F. Supp. 1365 (D.D.C. 1981). See also Appellees' C.A. Br. Addendum 64-65 (listing initial par-

ticipants in coordinated federal fundraising campaigns).[2]

Thus, as we explained in our opening brief (at 23-29), to the extent this case is properly subject to a "forum" analysis, it involves a nonpublic forum. See *Perry Education Assn.* v. *Perry Local Educators' Assn.*, 460 U.S. 37, 46-47 (1983). As amici United Black Fund of America, et al., correctly point out (Br. 9-15), the Campaign is at bottom a set of activi-

[2] Respondents' repeated assertion that they were "expelled" from the Campaign as a result of Executive Order No. 12,404 is inaccurate. Respondents initially participated in the Campaign as a result of their own litigating efforts in *NAACP I*, in which the district court held that the then-existing written explanations of Campaign eligibility criteria were unconstitutionally vague. The officials who administered the Campaign admitted respondents and other advocacy groups in an effort to comply with the ruling in that case and to reduce the potential for further litigation (see J.A. 310). But during this period federal officials were considering ways in which the Campaign would be returned to its original scope through more precise definition of the eligibility criteria in response to the holding in *NAACP I* (*e.g.*, J.A. 71-82). The experience of the Campaign held in the fall of 1982 helped to persuade the administrators of the Campaign, and ultimately the President, that the Campaign should be limited to traditional health and welfare charities on a permanent basis.

Respondents portray petitioner's endorsement of regulations issued to govern the fall 1982 Campaign as evidence that federal officials voluntarily included advocacy groups in the Campaign (J.A. 84-87). See Resp. Br. 9; see also American Jewish Comm. Am. Br. 16-17. Petitioner's comments were made in the context of continuing experimentation in response to the constraints imposed by the decision in *NAACP I* and his responsibility to encourage enthusiastic participation in the Campaign. In any event, those statements surely did not preclude the President from determining that the Campaign should be restored to its original contours.

ties that make up a federal program. Many aspects of the Campaign (*e.g.*, the payroll deduction feature) do not involve any expressive activity, but are simply mechanisms that permit efficient functioning of the program. See Pet. Br. 29 n.22. And the expressive activity that arguably is involved in the Campaign[3] is considerably less extensive or direct than that involved in the use of the school mailboxes in *Perry*. The essential teaching of *Perry* is that any First Amendment analysis of restrictions on access to public property must be informed by the context in which the restrictions are imposed. The context of this case reveals that it is at the outer perimeter of the nonpublic forum category and that, to the extent there are any First Amendment interests at stake, they are significantly weaker than in *Perry* itself.

2. As we showed in our opening brief, limiting Campaign participation to traditional health and welfare charities is consistent with the requirements of

[3] Respondents appear to acknowledge (Br. 18, 19-20; see also American Jewish Comm. Am. Br. 8; ACLU Am. Br. 10-11, 15) that the only expressive activity by charities that occurs as part of the Campaign is the drafting of the 30-word descriptive statements that appear in the Campaign brochure distributed to federal employees. Those statements, which are subject to review by federal officials (see Pet. Br. 27), help federal employees decide whether they wish to contribute to the Campaign and whether to designate particular groups to receive their contributions. But nothing about the Campaign requires that there be descriptive statements or that they be drafted by the charities themselves; federal officials could determine to replace the descriptive statements with a bare list of participating charities or to assume the responsibility for preparing the statements. Thus, use of the 30-word statements should not be viewed as transforming the Campaign into the equivalent of traditional charitable solicitation activities.

the Constitution because it is both viewpoint-neutral and reasonable in light of the purposes served by the Campaign and the federal workplace. *Perry*, 460 U.S. at 46. Respondents do not seriously contend that the Campaign eligibility criteria are not viewpoint-neutral;[4] and their challenge to the President's judgment that the criteria serve the purposes of the Campaign and the workplace is unsuccessful.[5]

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[4] Respondents do suggest, time and again (Br. 25, 26-27, 29, 30, 32, 36, 39-40), that the distinction between traditional charities and advocacy groups is based on petitioner's views about what types of organizations are worthwhile. See also ACLU Am. Br. 8. But it was the President, not petitioner, who promulgated the eligibility criteria in Executive Order No. 12,404. More important, the criteria do not constitute an expression of any particular individual's personal views. The distinction between traditional charities and other types of groups has existed from the inception of the Campaign in 1961; federal officials responsible for administering the Campaign have recognized and implemented that distinction through six different Administrations. Indeed, two respondents initially challenged the Campaign eligibility criteria in *NAACP I* because officials of the Carter Administration rejected their applications on the ground that they were advocacy groups, rather than traditional health and welfare charities. See page 3, *supra*. To the extent any conception of "worthiness" underlies the Campaign eligibility criteria, it reflects only a general consensus that traditional charities are the most appropriate beneficiaries of charity drives conducted in the workplace.

[5] Respondents make a desultory effort (Br. 24) to support the court of appeals' purported distinction between a "reasonableness" standard and a "rational basis" standard. However, they cite no authority that indicates that this Court has recognized any substantive difference in these standards in the context of nonpublic forum cases. As we suggested in our opening brief (at 45-46), we believe there is no significant difference. Compare *Perry*, 460 U.S. at 49 (footnote omitted)

a. Common sense alone suggests that limitation of Campaign participation to traditional health and welfare charities does not offend the Constitution. As we explained in our opening brief (at 32-34), the Campaign resembles most employer-sponsored charity drives in its inclusion of traditional health and welfare charities and exclusion of advocacy groups. For example, drives conducted by well-established federated charities such as the United Way generally are limited to traditional charities.[6] And, as Judge Starr

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(touchstone for First Amendment analysis is whether distinctions "are reasonable in light of the purpose which the forum at issue serves"), with *id.* at 55 (under equal protection analysis "the State may draw distinctions which relate to the special purpose for which the property is used"). Moreover, respondents' suggestion that a "reasonableness" standard requires independent judicial scrutiny of the evidentiary support for the government's exclusionary actions is inconsistent with this Court's statements in *Perry*, 460 U.S. at 52 n.12.

[6] Respondents mislead the Court in suggesting (Br. 28) that the United Way has always included advocacy groups as beneficiaries of its charitable solicitation efforts. Respondents cite the testimony of a United Way representative that the United Way historically has supported advocacy activities. But that representative was simply expressing concern that Executive Order No. 12,404 might operate to exclude traditional health and welfare charities from participation in the Campaign if they spent any portion of their resources on advocacy services "for the purposes of furthering their health and welfare missions." *Executive Orders 12353 and 12404 As They Regulate the Combined Federal Campaign: Hearing Before a Subcomm. of the House Comm. on Government Operations*, 98th Cong., 1st Sess. Pt. 1, at 250 (1983). The United Way representative referred not to groups like respondents, which exist for the purpose of litigating to further particular public policy goals, but to "settlement houses, family service agencies, public health organizations, and prisoner aid societies" (*ibid.*). The Office of Personnel Man-

noted, the notion that "the feeding of the hungry, the healing of the sick, and the educating of the ignorant" have a stronger "claim on the human conscience" than the activities of organizations engaged in the pursuit of policy goals has been "affirmed for over two thousand years" (Pet. App. 43a). The Campaign rests squarely within this longstanding and venerable tradition.[7]

Respondents urge (Br. 20, 22-32), however, that the distinction between traditional charities and advocacy groups cannot be reasonable because inclusion of advocacy groups in the Campaign is not "incompatible" with either the federal workplace or the purposes of the Campaign. See also ACLU Am. Br. 15-16, 24-25, 32.[8] In support of this "compatibility" ar-

agement responded to the concerns expressed by the United Way when it issued implementing regulations. See Pet. Br. 10 n.11.

[7] Respondents urge (Br. 27) that they should be regarded as traditional health and welfare charities because the litigation they undertake may lead to court orders that require provision of health and welfare services to individuals. See also American Jewish Comm. Am. Br. 15-16; NCRP Am. Br. 15-17; N.Y. State Am. Br. 18-19. But respondents do not purport to provide such services directly; nor do they state that they provide litigation services primarily on the basis of financial need. Moreover, respondents do not deny that they engage in advocacy activities, *i.e.*, that they "seek to influence * * * the determination of public policy through * * * advocacy, * * * or litigation on behalf of parties other than themselves." Exec. Order No. 12,404, § 1(b).

[8] Respondents and their amici contend vigorously that the relevant forum in this case is the Campaign, not the federal workplace. See Resp. Br. 19-20; NCRP Am. Br. 9-11; ACLU Am. Br. 14-21. We disagree. The Campaign itself is not a place, but rather a set of activities that occur in the federal workplace. Respondents would have little interest in having

gument, respondents cite the fact that the Campaign was created specifically to permit charitable solicitation activities in the federal workplace. Under respondents' view (see Br. 20), since it would be feasible to include 30-word statements about advocacy groups along with the statements about other organizations in the Campaign brochure, the First Amendment requires that advocacy groups be included as beneficiaries of the Campaign.

This Court did state in *Perry* that a nonpublic forum normally is limited to "activities compatible with the intended purpose of the property" (460 U.S. at 49). But that formulation hardly suggests that access to a nonpublic forum must be granted whenever it would be somehow feasible as a practical matter. Rather, the "touchstone" for evaluating distinctions in access to a nonpublic forum is "whether they are reasonable in light of the purpose which the forum * * * serves" (*ibid.* (footnote omitted)). The notion of "compatibility" therefore does not add any thing to the "reasonableness" standard under which we analyzed this case in our opening brief.

If respondents' "compatibility" argument were correct, it would yield two rather peculiar results. First, under that "compatibility" approach, a number of this Court's nonpublic forum cases would have turned out differently. For example, under respondents' view, the First Amendment would have required that the excluded union be given access to the school mail-

a 30-word description of their activities included in Campaign literature if that literature were not distributed in the workplace. But in any event, as we explained in our opening brief (at 23-24 n.18), we believe it makes little difference how the relevant forum is identified in this case, since any analysis of restrictions on access to a forum must take account of the context in which the forum exists.

boxes in *Perry*, because the facts that the excluded union previously had had access to the mailboxes and that certain civic groups and the union that served as the exclusive bargaining representative continued to have access would have indicated that access by the rival union was not incompatible with the purpose of the school mail system. Likewise, in *Lehman* v. *City of Shaker Heights*, 418 U.S. 298 (1974), the fact that commercial advertising was displayed in municipal transit vehicles would have established that political advertising was not incompatible with the forum.

Second, to the extent we understand respondents' conception of "compatibility," it appears to have no limiting principle. Under respondents' view, presumably any tax exempt organization must be admitted to the Campaign because it would be possible to include 30-word statements about each such organization in the Campaign brochure.[9] That approach would drain the *Perry* "reasonableness" standard of meaning.

b. Respondents insist (Br. 31-32) that this Court rejected any distinction between traditional charities

[9] This appears to be the thrust of respondents' argument, despite their protestations to the contrary (see Resp. Br. 41-42). Like the court of appeals (Pet. App. 21a, 25a-26a), respondents point out that both advocacy groups and groups eligible to participate in the Campaign have been granted tax exempt status under the provisions of the Internal Revenue Code. See Resp. Br. 32; see also NCRP Am. Br. 15-16. Neither respondents nor their amici suggest where the President could constitutionally draw the line on Campaign participation short of including all tax exempt groups. See also *Executive Orders 12353 and 12404 As They Regulate the Combined Federal Campaign, supra*, Pt. 2, at 144 (remarks of respondents' counsel Boris Feldman) (suggesting that first-come/first-served or lottery approach might be the only workable way to limit Campaign participation).

and advocacy groups in *Village of Schaumburg* v. *Citizens for a Better Environment*, *supra*. That case, of course, did not involve restrictions on access to a nonpublic forum. Rather, in *Village of Schaumburg* the Court was concerned with a governmental ban that directly affected expressive actions by advocacy groups, such as canvassing on public streets and from house to house. The Village contended that the ban was justified in order to prevent fraud and to protect public safety and privacy. The Court concluded that the ban on advocacy group activities was insufficiently related to the governmental interests asserted to justify its interference with protected speech. 444 U.S. at 635-639.

In this case, in contrast, there has been no attempt to prevent advocacy groups from engaging in their normal solicitation activities; the issue is whether they must be included as beneficiaries of a Campaign conducted by the government itself. Moreover, the activities at issue here take place not in the public streets, but in the federal workplace, where the government acts in its proprietary role as employer. Thus, both the effect on speech and the governmental interests at stake in this case are considerably different from those in *Village of Schaumburg*.

c. Respondents and their amici dispute the President's judgment that limiting the Campaign to traditional health and welfare charities serves the purposes articulated in Executive Order No. 12,404. But the objections they raise do not demonstrate that the President's judgment on this score was unreasonable.

Respondents fail to acknowledge the initial purpose of the Campaign stated in the executive order—lessening of the amount federal, state, and local governments must expend on social programs. Cf. ACLU Am. Br. 49-50. Since public funding of social pro-

grams normally is directed to the sorts of direct services provided by traditional health and welfare charities, rather than to, *e.g.*, the sorts of litigation or lobbying services provided by advocacy groups, encouraging federal employees to contribute to the traditional charities clearly serves this initial purpose.

Respondents attack the President's judgment that limiting the Campaign to traditional health and welfare charities will help to minimize disruption of the federal workplace and costs of the Campaign. See Resp. Br. 33-39. They state flatly (*id.* at 26 & n.33) that there is no evidence that recent inclusion of advocacy groups in the Campaign has created morale problems and diverted some federal employees from their normal duties. That statement is simply wrong; our opening brief (at 37-39) includes references to the record evidence supporting the President's judgment on this point. More important, this Court has made it clear that public officials need not establish an empirical basis for predictions about the likely effect of controversial speech in order to justify restrictions on access to a nonpublic forum. See, *e.g.*, *Perry*, 460 U.S. at 52 n.12. It was plainly reasonable for the President to conclude, as amici United Black Fund of America, et al., suggest (Br. 5), that, under the longstanding Campaign criteria, "[s]upport for the Campaign has been widespread because of the federal employees' confidence in the fact that their contributions were being used to fund traditional health and welfare agencies that operated without regard to politics or ideology." [10]

[10] Amicus State of New York represents (Br. 8, 10-13) that its recent inclusion of advocacy groups in its State Employees Federated Appeal has not caused any practical problems. While we are not in a position to question New York's extra-

Respondents also contend (Br. 36-39) that this Court's First Amendment precedents preclude restrictions of speech based on its controversial nature. See also NCRP Am. Br. 18; ACLU Am. Br. 50-51. Respondents disregard entirely the cases, cited in our opening brief (at 40), in which this Court has indicated that public officials may consider the potential

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record representations, we do note that New York's charity drive does not appear to include the full range of advocacy groups, including, *e.g.*, the National Right to Work Legal Defense Foundation. See N.Y. State Br. App.

Respondents suggest (Br. 30-31, 38-39) that inclusion of advocacy groups could not be controversial because such groups do not receive any Campaign funds unless an employee specifically designates a group to receive his contribution. The record indicates that this consideration does not prevent negative employee reactions to inclusion of advocacy groups. See J.A. 352-353, 362.

Respondents contend (Br. 10, 34-35) that the rate of employee participation increased from 64.7% to 67.65% between the 1982 (fall 1981) and 1983 (fall 1982) Campaigns. In response to a request from respondents' counsel, we have determined that certain estimation and keypunch errors (subsequently corrected by OPM) caused the percent participation figures on which respondents rely to be overstated. For example, we have identified a keypunch error for the local Campaign in Dubuque, Iowa that caused an overstatement of approximately 376,000 in the number of employees contributing to the 1983 (fall 1982) Campaign, which is reflected in the November 1983 document on which respondents rely. (That error is apparent on the face of the November 1983 printout, which shows an average Campaign contribution of two cents for Dubuque.) We have provided to respondents' counsel and lodged with the Clerk of the Court a letter containing an explanation of the errors reflected in the earlier figures, as well as updated and corrected employee participation figures, which show that employee participation fell from 60% in the 1982 (fall 1981) Campaign to 58% in the 1983 (fall 1982) Campaign.

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for controversy and disruption in determining the need for restrictions on access to a nonpublic forum.[11]

In addition, respondents reject the President's judgment that limiting the Campaign to traditional charities will preserve the reality and appearance of neutrality. See Resp. Br. 39-41; see also NCRP Am. Br. 19-20; ACLU Am. Br. 51-52. But it was surely not unreasonable for the President to determine that inclusion in the Campaign of advocacy groups, *i.e.*, groups that "seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves" (Exec. Order No. 12,404, § 1(b)), will detract to some extent from the appearance of neutrality in the federal workplace. See *United States Civil Service Comm'n* v. *National Ass'n of Letter Carriers*, 413 U.S. 548, 565 (1973). Respondents offer the assurance (Br. 41) that that problem can be readily solved by use of a disclaimer in the Campaign brochure. There is, of course, no guarantee that such a disclaimer would be seen by federal employees or that it could successfully

[11] Only by misrepresenting our position could respondents imply (Br. 36) that this case involves the question whether federal officials may exclude an individual group from the Campaign on the basis that some federal employees express opposition to the views of the group. As we made clear in our opening brief (at 40-41 n.32), we are not contending that federal officials may exclude individual groups from the Campaign in response to objections from federal employees. The question here is whether the President may differentiate among broad categories of organizations, based on various reasons, including the belief that inclusion of organizations in one category is more likely to engender controversy among federal employees and to jeopardize the success of the Campaign because of the nature of the activities of those organizations.

counter suspicions that inclusion of certain groups was in fact motivated by political considerations. Moreover, as we pointed out in our opening brief (at 42 n.34), any disclaimer included in Campaign materials would not be seen by those outside the federal workplace. In any event, this Court has declined to require public officials to employ such disclaimers as substitutes for restrictions on access in a nonpublic forum context. See *Lehman* v. *City of Shaker Heights*, 418 U.S. at 321-322 (Brennan, J., dissenting).[12]

d. We noted in our opening brief (at 44-45) that the fact that advocacy groups have alternative channels by which they can solicit contributions from federal employees supports the reasonableness of the Campaign eligibility criteria. Respondents and their amici insist that these alternative channels are wholly inadequate, since the Campaign is an especially efficient and inexpensive way for organizations to raise money. See Resp. Br. 43-44; ACLU Am. Br. 52-54; N.Y. State Am. Br. 14-16.

We do not dispute that charities that are included in the Campaign receive significant benefits, particularly in the form of reduced fundraising expenses. For example, federal employees carry out all solicitation activities on official time; government payroll offices arrange for automatic deduction of employees' contributions; and the government administers re-

[12] Respondents and their amici cite *Widmar* v. *Vincent*, *supra*, in support of their contention that the interest in neutrality does not support restriction of Campaign participation. But *Widmar* was a limited public forum case involving a university setting that the Court described as "the marketplace of ideas." 454 U.S. at 267 n.5. The interest in neutrality is clearly stronger in the context of the federal workplace.

porting requirements and compiles statistical data for the Campaign. Such activities, which involve substantial cost to the government and corresponding savings to participating charities, are akin to a federal subsidy. But respondents and other advocacy groups do not possess a First Amendment right to these special benefits. See *Regan* v. *Taxation With Representation*, 461 U.S. 540, 545-546 (1983); cf. *Harris* v. *McRae*, 448 U.S. 297, 316-318 (1980).[13]

There can be no doubt about the existence of alternative channels of communication through which respondents and other advocacy groups may reach federal employees. They are precisely the same channels the advocacy groups regularly use to reach all other potential donors who do not happen to be federal employees, including direct mailings, telephone contact, and media advertisements. The fact that advocacy groups do not participate in the Campaign in no way deprives them of any of these normal channels of communication.[14]

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[13] Respondents' contentions on this point suggest that they are less interested in communicating a message to federal employees than in the monetary advantages that accompany participation in the Campaign.

[14] Respondents (Br. 27, 29) and their amici (NCRP Am. Br. 20-21; American Jewish Comm. Am. Br. 20-24) therefore err in asserting that limitation of the Campaign to traditional health and welfare charities penalizes advocacy groups for their exercise of rights protected by the First Amendment, citing *NAACP* v. *Button*, 371 U.S. 415 (1963). Respondents' legal advocacy activities unquestionably are protected by the First Amendment. But unlike the situation in *Button*, the fact that respondents do not enjoy the benefits of Campaign participation does not inhibit or penalize their protected activities or interfere with their normal fundraising efforts in support of those activities. Compare, *e.g.*, *Harris* v. *McRae*, 448 U.S. at 316-318 & n.19; *Maher* v. *Roe*, 432 U.S. 464, 474 & n.8 (1977).

3. Respondents' basic complaint in this case is that, under the criteria established in Executive Order No. 12,404, some types of groups may participate in the Campaign, while others, including respondents and other advocacy groups, may not. Ultimately, then, this case boils down to a problem in line-drawing. There is no disagreement that a line must be drawn somewhere in defining Campaign participation. The court of appeals appears to have believed that the line should encompass all organizations that qualify for tax exempt status under 26 U.S.C. 501(c)(3). The President and those who have responsibility for administering the Campaign chose a different line—one that, consistent with the practice during the first two decades of the Campaign, encompasses the broad class of traditional health and welfare charities, but not the many other types of tax exempt organizations, such as opera guilds, animal welfare groups, churches, and advocacy groups. Although arguments can be made in support of the more inclusive approach favored by respondents and the court of appeals, the line drawn by the President is clearly a reasonable one in the context of the federal workplace and the Campaign and therefore satisfies First Amendment requirements.

For the foregoing reasons and those stated in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

REX E. LEE
Solicitor General

JOSEPH A. MORRIS
General Counsel
Office of Personnel Management

FEBRUARY 1985

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